

FINAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Sections 3030, 3050, 3268.2, 3355, 3355.1, and to adopt 3355.2 of the California Code of Regulations (CCR), Title 15, Division 3, concerning the care and treatment of pregnant inmates in adult institutions.

Assembly Bill (AB) 478 (Chapter 608, Statutes of 2005), changed existing provisions of the Penal Code and the Welfare and Institutions Code relating to adult inmates and juvenile wards who give birth while under the jurisdiction of the CDCR. Specific to adult institutions, these proposed regulations will bring the Department into compliance with amended Penal Code (PC) Sections 3419, 3423, 3424, and 5007.7, and are necessary in order to ensure that the safety and medical concerns of pregnant inmates and their unborn children are met during pregnancy and delivery.

These regulations update current language relating to pregnant inmates and the issuance of state clothing, regular meals, use of restraints, and health and dental examinations. In addition, these regulations provide new language governing pregnant inmate health care, dental care, nutrition, education, childbirth, and community treatment programs.

These regulations also include additional changes that have been made to the originally proposed text. To clarify vague language, changes were made to subsection 3355.2(k) for the purpose of specifying the amount of time a Warden or designee had in providing response to a pregnant inmate's request for a support person. This was done in accommodation to a commenter who provided written response to the originally proposed text. A 15-Day Renotice, which included the amended text, was forwarded to all individuals who had responded within the minimum 45-day comment period.

After completion of the initial 15-Day Renotice and upon a final review of the text, it was recommended from the Office of the Receiver that additional changes still needed to be made for the purpose of correction and clarity. Based on this recommendation, a 2nd 15-Day Renotice text was completed and forwarded to the original 3 commenters for review and comment, and at the same time, posted to the CDCR Internet and Intranet Web sites for public review. Changes to this text include amendments to subsections 3050(a)(3), 3355.2(h)(1), 3355.2(h)(2), and 3355.2(l).

Lastly, these regulations incorporate by reference into the text, CDC Form 7410 (08/04) Comprehensive Accommodation Chrono. Because there are over 1,400 forms for use within the Department and its adult operations, and the vast majority of these forms, including the CDC Form 7410, are for staff and internal management use only, the Department pursuant to CCR, Section 20(c)(1) has determined that it would be impractical and unnecessary to publish this form in the CCR. With an established form ordering and distribution process already in place, staff would have no need for, and would not utilize the CCR in order to have access to this form.

3030. Issuance and Possession of State Clothing and Linen.

Subsection 3030(a) through (b)(3)(B) are unchanged.

Subsections 3030(b)(3)(C) and (D) are amended. In (C), to correctly start the sentence, the lower case “b” has been changed to an upper case “B” in the word “Bras”, and in (D), the letter “u” has been added to correctly spell the word “muumuu”.

Subsections 3030(b)(3)(E) through (H) are unchanged.

New subsection 3030(b)(3)(I) is adopted to provide pregnant inmates one additional larger pair of shoes. This is necessary in order to accommodate the swelling of their feet during pregnancy.

Subsections 3030(c) through (e) are unchanged.

3050. Regular Meals.

Subsection 3050(a) is amended for correction purposes by providing that the Food and Nutrition Board of the Institute of Medicine, National Academy of Science is the authority that the Department follows when setting nutritional levels of Recommended Dietary Allowances and Dietary Intakes.

Subsections 3050(a)(1) and (2) are unchanged.

New subsection 3050(a)(3) is adopted to provide pregnant inmates with the extra nutritional requirements needed for a healthy and successful pregnancy. In addition, based on a recommendation from the Office of the Receiver, additional text was added to clarify the calcium requirements for pregnant inmates by specifying two extra “eight ounce” cartons of milk “or a calcium supplement if lactose intolerant.” This additional change was presented in a 2nd 15-Day Renotice.

Subsection 3050(b) is unchanged.

3268.2. Use of Restraints

Subsections 3268.2(a) through (b)(4) are unchanged.

New subsection 3268.2(b)(5) is adopted to bring the Department into compliance with PC Section 3423. New language provides that mechanical restraints shall not be placed on an inmate during labor, during transport to a hospital, during delivery, and while in recovery after giving birth unless circumstances exist that require the immediate application of mechanical restraints to avoid the imminent threat of death, escape or great bodily injury.

Subsection 3268.2(c) is unchanged.

Existing subsection 3268.2(d) is renumbered to new subsection 3268.2(e) and is unchanged.

New subsections 3268.2(d), (d)(1), (d)(2), and (d)(3) are adopted to clarify the requirements for the use of mechanical restraints on inmates who are or are suspected of being pregnant. The purpose of these amendments is to protect the unborn child by removing any confusion concerning the use of mechanical restraints on pregnant inmates. It was also determined that additional clarification to the originally proposed text was needed in new subsection 3268.2(d). For the purpose of clarifying the intent of AB 478 to include all pregnant inmates, the wording in (d),

“but not in labor” was deleted so that subsection 3268.2(d) now reads “Use of mechanical restraints on inmates confirmed, or suspected by health care staff to be pregnant shall be subject to the following requirements.” Also for clarity in subsection 3268.2(d)(3), the word “also” was added so that the last sentence now reads “If the pregnant inmate is in labor, the rules provided in subsection 3268.2(b)(5) shall also be followed.” Because the Department is only clarifying its intent for the regulations and the intent of the AB 478, a 15-Day Renotice was not necessary for these changes.

3355. Health Care Examinations.

Subsection 3355(a) is amended for correction purposes by deleting the reference to the abolished Director of Corrections and replacing it with the Secretary of the CDCR. In addition, clarifying language has been added to provide that female inmates will also be screened for pregnancy on their initial health examination, which is the necessary first step to determine, either by self report or by physical appearance, that a female inmate may be pregnant.

Subsections 3355(b) through (d) are unchanged.

3355.1. Dental Examinations.

Subsections 3355.1(a) through (b)(3) are unchanged. It should be noted that in the original proposed text, specifically subsection 3355.1(b), a typographical error was discovered and has been corrected in the final text. Specifically, reference to “14 days” has been changed to correctly reference the current text “90 calendar days.” Subsection 3355.1(b) still remains unchanged.

Existing subsection 3355.1(c) is renumbered to 3355.1(d) and is unchanged.

New subsection 3355.1(c) is adopted to comply with PC Section 3424 concerning a dental cleaning for pregnant inmates. The Department has provided that during the second trimester of gestation, which is the safest period in which to provide routine dental care, the pregnant inmate shall receive a dental examination and cleaning, a periodontal evaluation, and during the gestation period, receive the necessary dental care that will maintain periodontal health. The emphasis by the Department is that the dental treatment during this period is to control active periodontal disease and eliminate potential problems, such as infection, that may occur later in the pregnancy.

Existing subsection 3355.1(d) is renumbered to 3355.1(e) and is amended for clarification by referencing the rules provided in subsections 3268.2(b) and (d) that concern the use of restraints for pregnant inmates.

Section 3355.1 Authority and Reference Citation was added to the final text. This non-substantive change corrects an inadvertent omission from the original proposed regulations. In addition, relevant Penal Code Section 3424 was added as a reference.

New section 3355.2 is adopted to comply with AB 478 and/or to ensure that the safety and proper medical care of pregnant inmates and their unborn children during pregnancy is provided.

3355.2. Treatment for Pregnant Inmates.

New subsections 3355.2(a) and (b) are adopted to provide that inmates identified as possibly being pregnant during the initial health examination will be scheduled for laboratory work to verify pregnancy within three business days of arrival at the institution, and if confirmed pregnant, will be scheduled for an obstetrics (OB) examination within seven days of arrival at the institution. These steps are necessary so that the Department can confirm inmate pregnancy as quickly as possible and begin an effective plan for the care and treatment of the inmate and unborn child.

New subsections 3355.2(c), (c)(1), (c)(2), (c)(3), and (c)(4) are adopted to provide the schedule of OB visits for pregnant inmates, unless it will otherwise be indicated or changed by a OB physician or Nurse Practitioner (NP). This amendment is necessary to ensure that each pregnant inmate will be provided consistent care throughout their term of pregnancy.

New subsection 3355.2(d) is adopted to provide that pregnant inmates housed in a multi-tier housing unit, will be issued a CDC Form 7410, Comprehensive Accommodation Chrono, which is incorporated by reference, for a lower bunk and lower tier housing. This change is necessary to minimize strenuous activity and/or potential falls for the pregnant inmate and at the same time protect the health and well being of the unborn child.

New subsection 3355.2(e) is adopted to specify that pregnant inmates who have used heroin within three days prior to incarceration, either by self admission or written documentation by a parole agent, or are currently receiving methadone treatments, shall be enrolled in the Methadone Maintenance Program, and recommended for immediate transfer to the California Institution for Women, which is currently the clinic location for the Methadone Maintenance Program. This amendment is necessary in order to provide for the health and well being of both the pregnant inmate and unborn child.

New subsection 3355.2(f) is adopted to bring the Department into compliance with PC Section 3419. These regulations provide that any community treatment program developed for eligible pregnant and/or parenting female inmates in addition to the Family Foundations Program, shall include but not be limited to, prenatal care, access to prenatal vitamins, childbirth education, and infant care.

New subsection 3355.2(g) is adopted to comply with PC Section 3419 by providing that any inmate who gives birth after her receipt by the Department, shall be provided notice of, and a written application for, a community treatment program. At a minimum, the notice shall contain the guidelines for qualification, timeframe for application, and the process for appealing a denial of admittance.

New subsection 3355.2(h) is adopted to bring the Department into compliance with PC Section 3424. These regulations provide that a pregnant inmate who is not eligible for a community treatment program shall have access to complete prenatal health care which shall include a balanced, nutritious diet approved by a doctor, prenatal and postpartum information and health care, including access to necessary vitamins as recommended by a doctor, information pertaining to childbirth education and infant care, and a dental cleaning. In addition, changes to the originally

proposed text were provided in a 2nd 15-Day Renotice which amended subsections (h)(1) and (h)(2). Subsection 3355.2(h)(1) was amended by removing the reference “approved by a doctor” and replacing it with “per subsection 3050(a)” which is the appropriate reference to the regulation that provides that each inmate shall be provided a wholesome, nutritionally balanced diet. Subsection 3355.2(h)(2) was amended by removing the wording “access to” and deleting the word “recommended” and replacing it with “prescribed” so that the sentence now correctly reads “Prenatal and postpartum information and health care, including, but not limited to, necessary vitamins as prescribed by a doctor.”

New subsection 3355.2(i) is adopted to provide the inmate with the necessary help and assistance for the care and placement of the child after delivery. The adopted language will provide that each pregnant inmate shall be referred to a Medical Social Worker and that the Medical Social Worker shall discuss with the inmate the options available for placement and care of the child after delivery. The Medical Social Worker shall also assist the inmate with access to a phone in order to contact relatives regarding newborn placement, and oversee the placement of the newborn child.

New subsection 3355.2(j) is adopted to comply with PC Sections 3423 and 5007.7 by providing that a pregnant inmate may be temporarily taken to a hospital outside the institution for the purposes of childbirth, and that the pregnant inmate shall be transported in the least restrictive way pursuant to the rules provided in complete Subsections 3268.2(b) and (d). To help ensure the health of the inmate and the unborn child, any pregnant inmate in labor will be treated as an emergency and shall be transported via ambulance to the outside facility, accompanied by custody staff.

New subsection 3355.2(k) is adopted to provide that a pregnant inmate may elect to have a support person present during child birth. The support person may be an approved visitor or the institution’s staff who is designated to assist with prenatal, labor, and postpartum care. Approval for the support person will be made by the Warden or designee and any reason for denial shall be provided to the inmate. An additional change was also made to the originally proposed text and was included in the 1st 15-Day Renotice. To clarify vague language, text was amended to specify that if a pregnant inmate’s request for an elected support person is denied, reason for the denial shall be provided in writing to the inmate within 15 working days of receipt of the request.

New subsections 3355.2(l), (l)(1), (2), (2)(A), (2)(B), and (3) are adopted to specify the postpartum care that a female inmate, who delivers a child, will receive upon return to the institution. One change to the originally proposed text was provided in a 2nd 15-Day Renotice for correction purposes. Subsection 3355.2(l) was amended to change the reference of Clinical Treatment Center to Correctional Treatment Center (CTC), which is the correct reference.

DETERMINATION:

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons.

ASSESSMENTS, MANDATES, AND FISCAL IMPACT:

This action will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, or create or expand businesses in the State of California.

The Department, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on local government, or Federal funding to the State, or private persons. For any cost or savings to any state agency, the fiscal impact of the dental services portion of this action was funded by the approved FY 2006/07 Finance Letter, "Inmate Dental Services Program" with any remaining services requiring no additional funding for FY 2006/07. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states because they are not affected by the internal management of State prisons; and no costs or reimbursements to any local agency or school or school district within the meaning of Government Code Section 17561. The Department has made an initial determination that the proposed action will have no significant effect on housing costs. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

PUBLIC HEARING COMMENTS

Public Hearing: Held May 3, 2007, at 9:00 a.m.

No one commented at the Public Hearing.

SUMMARIES AND RESPONSES TO WRITTEN PUBLIC COMMENTS:

Commenter #1:

Comment 1A: Commenter provided the following text statement: **New subsection 3268.2(b)(5)...**"New language provides that mechanical restraints shall not be placed on an inmate during labor, during transport to a hospital **while in labor...** I feel this is absolutely necessary as the simple statement can be misinterpreted by both staff and inmates (close the window of opportunity.) While in recovery after giving birth, unless... Again, the "," here is so that the unless...applies to all of the above, should the need arise (opportunity).

Accommodation: None.

Response A: It's not quite clear what message the commenter is trying to convey but the Department can say that the regulations provided in subsection 3268.2(b)(5) are clear concerning that mechanical restraints shall not be "Placed on an inmate during labor, including during transport to a hospital, during delivery, and while in recovery after giving birth, unless circumstances exist...". To state "while in labor" after each specific description would be repetitive and is not necessary.

COMMENTS #2:

Comment 2A: Commenter states she is writing on behalf of Legal Services for Prisoners with Children (LSPC) and in general, LSPC supports the proposed changes. In this first comment, commenter references the proposed regulations under Section 3050, Regular Meals, which provides that pregnant inmates will receive two extra servings of fresh fruits and vegetables and two extra cartons of milk each day. Commenter states that interviews with pregnant women at Valley State Prison for Women within the past eight months, indicates they are instead only receiving one small apple, a packet of broccoli, and one carton of milk in addition to the regular meals. Additionally, these "extra" items were given to the women in the morning, which required that they consume them early in the day so that they would not spoil. She is concerned that the women will not receive the food and milk at scheduled intervals throughout the day and if they are given the items in the morning (or evening), questions how they can keep the items fresh and/or refrigerated until they are ready to be consumed.

Accommodation: None.

Response 2A: The commenter doesn't seem to be in any disagreement with the proposed regulations but has made an allegation that inmates are not being provided the two extra servings per day. Because the allegation is non-specific and generalized, it is difficult to substantiate the allegation and to specifically refute or accommodate it. The Department will respond by saying that it has not received any other complaints regarding this issue but will forward this comment to the appropriate staff for follow-up to make sure that the two extra servings as provided in these regulations are being provided. The Department contends that within each institutional security setting, the Department makes every reasonable effort to provide the extra servings of food each day at a time that will allow the inmate the opportunity to consume the food items in a fresh and safe manner.

Comment 2B: Commenter references the text in Subsection 3268.2(b)(5) under Use of Restraints, specifically "that restraints will not be placed on a woman during her labor, during transport to a hospital, during delivery and while in recovery after giving birth *unless circumstances exist that require the immediate application of mechanical restraints to avoid imminent threat of death, escape, or great bodily injury, and only for the period during which such threat exists* (emphasis in italic). Commenter states that it is the italicized part of the referenced section that causes concern. Commenter wants to know who determines whether a particular woman needs to be shackled, if it is custodial staff on duty at the time, and if there are written protocols/guidelines that must be followed before a pregnant prisoner can be restrained? Commenter then recommends that staff be trained so that they can

make a determination about the use of restraints that is based on established protocols rather than the subjective opinion of custodial staff.

Accommodation: None.

Response 2B: The Department contends that custody staff who accompany an inmate during transport have been fully trained in the use of restraints, and are capable of assessing each possible situation and/or incident in order to correctly determine the need and level for its use. Pursuant to Penal Code Section 832, “every person described as a peace officer shall satisfactorily complete an introductory course of training prescribed by the Commission on Peace Officer Standards and Training.” Each correctional officer employed by the Department has successfully completed and passed a rigorous 16 week comprehensive training course which meet Commission standards and provides each correctional officer candidate with the required job skills that will allow him or her to effectively perform all phases of the job. Custody staff who are part of transport teams that accompany inmates outside of a facility are provided with additional training, which includes the proper use of restraints on inmates who are pregnant.

Comment 2C: Commenter references Subsection 3355.2(k) which provides that a pregnant prisoner may elect to have a support person present during childbirth and that the support person may either be an approved visitor or institutional staff that is designated to assist with prenatal, labor and postpartum care. The warden or designee must approve the request. Commenter states that they have concerns about how long the process will be for an approved visitor to receive notice that he or she has been approved to be present during the delivery and questions if the staff that is present is custodial or medical staff, and does the woman have the right to choose which staff person is present at the delivery if in the event there isn’t an approved visitor. Lastly, the commenter states that it is the LSPC understanding that doulas have been meeting with pregnant inmates and on some occasions, been present during the delivery. If that is the case, the LSPC is in support of the change.

Accommodation: Subsection 3355.2(k) was amended for clarification and noticed in a 15-Day Renotice.

Response 2C: The Department recognizes the physical and even more important, the emotional needs of the pregnant inmate. The purpose of the regulations as provided in Subsection 3355.2(k) are to allow the pregnant inmate, if they choose, a support person who will assist and provide support in the childbirth and postpartum experience. Within an institutional setting however, the safety of persons and the security of the facility have to always be considered and any visitor, which includes a support person, must be approved according to current visiting regulations, guidelines and procedures. If a requested support person does not meet these criteria, that person will be denied access to the facility. As provided in proposed Subsection 3355.2(k), “reason for a denial shall be provided to the inmate in writing and must address the safety/security concerns for the inmate, infant, public, and/or staff.” Because of vague language concerning a written denial, the text in Subsection 3355.2(k) was amended to clarify and now provide that the reason for the denial shall be provided in writing to the inmate within 15 working days of receipt of the request. This change will allow sufficient time, if the inmate chooses, for an

approved and trained staff to then act as the support person. The support person provided by the institution may be a doula, generally a woman who is educated and experienced in the childbirth and postpartum process who will provide physical (non-medical), emotional and informational support.

COMMENTER #3:

Comment 3A: Commenter states that “Prenatal obstetric examinations provided to imprisoned women must meet established medical standards and include a mental health screening.” Commenter feels that the proposed amendments fail to satisfy this mandate because they do not establish substantive standards to guide the provision of prenatal care in California’s women’s prisons. Commenter also states that to ensure that medically acceptable care is provided, Section 3355.2 should provide that prenatal examinations be carried out in accordance with guidelines set by a reputable medical authority such as the American College of Obstetricians and Gynecologists (ACOG), and that they include diagnostic tests under those guidelines including tests for genetic disease and gestational diabetes. In addition, the commenter states that mental health screening and follow-up care be mandated in the regulations.

Accommodation: None.

Response 3A: The Department disagrees with the commenter’s generalized assertion that the proposed amendments do not establish substantive standards of medical care. These regulations are consistent with AB 478 and implement its provisions. Pursuant to Government Code Section 11349(c), these regulations meet the clarity standard and are written in plain straightforward language while avoiding technical terms as much as possible while at the same time using easily readable language. Adopted Section 3355.2 clearly outlines and provides for each pregnant inmate the necessary medical care throughout their term of pregnancy, delivery and postpartum care.

For medical staff, the more technical guidelines and standards are provided in the medical policies and procedures developed by the Division of Correctional Health Care Services. Based on accepted medical standards and court directives, these policies and procedures provide the procedural guidelines that help appropriate staff assess each individual inmate’s medical condition, needs, and quality plan of care.

Concerning mental health problems and screening, the Department evaluates inmates on an ongoing basis to identify any mental health needs. This would include pregnant inmates. If an inmate feels the need, a mental health evaluation can be requested. From a draft agreement resulting from the Coleman federal class action lawsuit, the CDCR Mental Health Services Delivery System (MHSDS) has developed specific “Program Goals and Objectives” that help in part to ensure a continuation of care for inmate patients with identified mental health treatment needs, and mental health screening and evaluation of inmates who are not currently in the MHSDS.

Comment 3B: Commenter states that “Pregnant women must be given sufficient information to exercise informed consent when receiving pregnancy care and to

understand and exercise their right to have a support person present when they give birth.” Commenter states that pregnant women in prison are isolated, cut off from sources of important medical information at a time it is critical that they understand what is happening to their bodies and to how best take care of themselves. Commenter alleges that imprisoned women experiencing serious complications while pregnant have indicated that no one ever explained in clear language what was wrong and what treatment options were available, and with the prescribed medication being given without sufficient information about its potential impact during pregnancy, the women are unable to make informed decisions about the health care they receive.

Accommodation: None.

Response 3B: The Department contends that the commenter’s assertions in this statement have been addressed in the proposed text. The regulations are quite clear in specifying that childbirth education and information will be provided to each pregnant inmate pertaining to the childbirth process and infant care. New Subsection 3355.2(f) specifies that under community treatment programs, “Any community treatment program developed for eligible pregnant and/or parenting female inmates in addition to the Family Foundations Program, shall include, but no be limited to: 1) Prenatal care; 2) Access to prenatal vitamins.; **3) Childbirth education;** 4) Infant care.” Additionally, for pregnant inmates who are not eligible for a community treatment program, new Subsection 3355.2(h)(2) provides “Prenatal and postpartum information and health care”, and new Subsection 3355.2(h)(3) provides “Information pertaining to childbirth education and infant care.” The Department is required and does provide to each pregnant inmate the necessary prenatal and childbirth information that will help the inmate be better educated and informed regarding the childbirth process, and will make every reasonable effort to communicate this information in a clear and concise manner that can be understood by the inmate. Concerning the commenter’s reference to a support person, **see Commenter #2, Response 2C.**

Comment 3C: Commenter references Penal Code (PC) Section 3424(c) and states that the proposed regulations meant to interpret and make specific this provision is instead replicated verbatim and without elaboration thus in this current form, the proposed regulations do nothing to ensure that the safety and medical concerns of pregnant prisoners are met because they do not require that childbirth information be presented in an understandable and linguistically and culturally accessible form. In addition, commenter states that the proposed Section 3355.2(h)(3) should be changed to require that childbirth information be provided by a certified registered nurse or obstetrician as soon as pregnancy is detected and that it be presented in a format and language understood by the recipient. Commenter then repeats the need to provide information about mental health concerns.

Accommodation: None.

Response 3C: See Commenter #3, Response 3A and Response 3B.

Comment 3D: Commenter states that all women should be given assistance in developing a birth plan as soon as possible after their pregnancies are detected and

that a key component of the plan should be in identifying who the pregnant woman would like to attend the birth and how she ideally would like the birth to proceed. Commenter states that all women must be given information about who may attend the birth, what process they need to follow, and what criteria must be met for detention facility officials to deny access to the birth attendant requested by the mother. This will require changing both Sections 3355.2(h)(3) and 3355.2(k) to lay out in greater detail, the legitimate bases on which the mother's requested support person may be denied access to the birth.

Accommodation: None.

Response 3D: The Department contends that within the institutional security setting, every reasonable effort is made to insure that the pregnant inmate's term of pregnancy and delivery is done in a safe and comfortable manner. The pregnant inmate's full participation in this process is encouraged but the commenter must realize that safety and security requirements may limit some choices available to each pregnant inmate. It is unclear why the commenter is requesting a "birth plan", but new Subsection 3355.2(b)(1) provides for each confirmed pregnant inmate, a plan of care that is developed within seven days of arrival at the institution. As stated in Response 3A, "adopted Section 3355.2 clearly outlines and provides for each pregnant inmate the necessary medical care throughout their term of pregnancy, delivery and postpartum care." Concerning the reference to when a requested support person may be denied, **see Commenter #2, Response 2C.**

Comment 3E: Commenter references PC Section 3424(a), the requirement for the Department to establish minimum nutritional standards for pregnant women that include a "balanced, nutritious diet", and states under proposed Title 15 Section 3050(a)(3), additional servings of fruit, vegetables, and milk are provided for pregnant inmates. Commenter states that while defining the types of food to be served is an important step in protecting the health of pregnant inmates, the information they have gathered suggests a critical need to guarantee that the food actually provided to pregnant inmates, like all prisoners, be safe and fresh. Language to this effect should therefore be added to the proposed regulations.

Accommodation: None.

Response 3E: See Commenter #2, Response 2A. In addition, all food is prepared in a safe and fresh manner and meets the nutritional requirements as provided in Section 3050(a) of these regulations. Also, health and safety standards concerning food service are already provided in Section 3052.

Comment 3F: Commenter provides that imprisoned pregnant women must be provided adequate clothing, including properly fitting undergarments. Because pregnancy causes general weight gain, in particular, an increase in the size of the abdomen and breasts, at least three additional bras and five pairs of cotton maternity panties should also be provided in a larger size.

Accommodation: None.

Response 3F: Each week when a pregnant inmate turns in their laundry for cleaning (weekly laundry exchange), they can designate a larger size of undergarment be returned in order to accommodate any possible weight gain due to pregnancy.

Comment 3G: Commenter references PC Section 5007.7, which provides that pregnant inmates temporarily taken to a hospital outside the prison for the purpose of childbirth shall be transported in the least restrictive way possible, consistent with the legitimate security needs of each inmate. Commenter states that the proposed regulations fail to implement this statutory mandate, and that proposed Subsections 3268.2(d) and 3355.2(j) makes clear that all pregnant women must be transported in the least restrictive way possible. Commenter alleges that Subsection 3268.2 suggests that the shackling of nonlaboring pregnant women, like the many women who are transported to the hospital for induction when 9-months pregnant and highly unlikely to pose a threat to security, is generally acceptable. Commenter states that both Subsections 3355.2(j) and 3268.2 must be modified to reflect clearly the statutory requirement that all pregnant women, whether or not they are already in labor, be transported to the hospital for childbirth in the least restrictive way possible.

Accommodation: None.

Response 3G: The Department disagrees and questions what the commenter considers as being “least restrictive” since no specific examples were provided in the statement. Safety and security requirements are always followed when transporting inmates, but the Department contends that these regulations are clear and do in fact provide the least restrictive way possible when using restraints on an inmate who is pregnant. Subsection 3268.2(b)(5) clearly provides that restraints shall not be “Placed on an inmate during labor, including during transport to a hospital, during delivery, and while in recovery after giving birth, unless circumstances exist that require the immediate application of mechanical restraints to avoid the imminent threat of death, escape, or great bodily injury, and only for the period during which such threat exists.” Subsection 3268.2(d) provides for inmates who are confirmed or suspected to be pregnant, but not in labor, that “No leg restraints or waist chains shall be applied”, and “If handcuffs are applied, the inmate’s arms shall be brought to the front of her body”, and “When transporting a pregnant inmate off grounds, the application of restraint gear shall be restricted to handcuffs to the front of the inmate only.” It is the Department’s contention that handcuffs applied to the front of body only, and only in circumstances for the purpose of safety and security, do provide the least restrictive means when transporting a pregnant inmate and will pose no health or safety concerns to the inmate and/or unborn child.

Comment 3H: Commenter references that postpartum care for the imprisoned women must include the timely and proper repair of birth injuries, treatment for long-term vaginal bleeding, adequate pain medication, and mental health care, and that PC Section 3424 requires that the Department establish minimum standards concerning the postpartum information and health care be provided. The Commenter feels however that the proposed regulations pertaining to postpartum health care, like those describing prenatal care, fail to define sufficiently the substance of the care being mandated (Title 15, Subsection 3355.2(l).) Commenter alleges women prisoners routinely have their hospital prescribed medications taken

from them when they return to prison and are often unable to receive any more, even through the dispensary. In addition, multiple reports have been received of birth injuries that are left unrepaired or not repaired properly. Commenter requests that Section 3355.2(f) should be changed to require that birth injuries, including episiotomies that have healed poorly, be repaired properly; that long-term vaginal bleeding be addressed; and that adequate pain medication be provided to women once they have returned to prison.

Accommodation: None.

Response 3H: See Commenter #3, Response 3A.

15-DAY RENOTICE:

Public Comment period was August 1, 2007 through August 20, 2007

A 15-Day Renotice was provided to written commenters #1, #2, and #3. No comments were received during the 15-Day Renotice period.

2nd 15-DAY RENOTICE:

Public Comment period was January 17, 2008 through February 4, 2008

A 2nd 15-Day Renotice was provided to written commenters #1, #2, and #3 and posted to Department Web sites. No comments were received.